In the Supreme Court of the State of Idaho

IN RE: AMENDMENT OF IDAHO RULES OF FAMILY LAW PROCEDURE 101, 112, 115, 210, 401, 413, 443, 504, 511, 811, 812 and ADOPTION OF 126 and 127	)	**ORDER AMENDING RULES**

The Court having reviewed a recommendation to amend Idaho Rules of Family Law Procedure, and the Court being fully informed;

NOW, THEREFORE, IT IS HEREBY ORDERED that Idaho Rules of Family Law Procedure, as they appears in the volume published by the Idaho Code Commission, be, and are hereby, amended as follows:

1. That Rule 101 be, and the same is hereby, amended as follows:

Rule 101. Scope of the Rules.

These rules govern the procedure in the magistrate's division of the district court in the State of Idaho in all actions for divorce, legal separation, child support, child custody, and paternity; all proceedings pursuant to the Domestic Violence Crime Prevention Act; all actions pursuant to the De Facto Custodian Act; and all proceedings, judgments or decrees related to the establishment, modification, or enforcement of orders in such actions, except contempt. These rules shall not apply to actions arising under the Child Protection Act, actions for adoption, actions for termination of parental rights, or actions for guardianship or conservatorship. These rules shall be liberally construed and enforced in a manner to secure the just, prompt and inexpensive determination of every action and proceeding.

2. That Rule 112 be, and the same is hereby, amended as follows:

Rule 112. Appearance and Withdrawal of Counsel.

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A. Leave to withdraw - notice to client. If an attorney is granted leave to withdraw, the court shall enter an order permitting the attorney to withdraw. After the order is entered, the clerk shall immediately serve a copy of the order on all parties in accord with Rule 115.D. The order shall direct the party whose attorney is withdrawing ~~and directing the attorney's client~~ to appoint another attorney to appear, or to appear in person by filing a

written notice with the court stating how the client will proceed without an attorney, within 20 days from the date of service ~~or mailing~~ of the order ~~to the client. After the order is entered, the withdrawing attorney shall forthwith, with due diligence, serve copies of the same upon the client and all other parties to the action and shall file proof of service with the court. The withdrawing attorney may make such service upon the client by personal service or by certified mail to the last known address most likely to give notice to the client, which service shall be complete upon mailing~~. Upon the entry of an order granting leave to an attorney to withdraw from an action, no further proceedings can be had in that action which will affect the rights of the party of the withdrawing attorney for a period of 20 days after service ~~or mailing~~ of the order ~~of withdrawal to the party~~. If such party fails to file and serve an additional written appearance in the action either in person or through a newly appointed attorney within such 20 day period, such failure shall be sufficient ground for entry of default and default judgment against such party or dismissal of the action of such party, with prejudice, without further notice, which shall be stated in the order of the court. ~~The attorney shall provide the last known address of the client in any notice of withdrawal.~~

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3. That Rule 115 be, and the same is hereby, amended as follows:

Rule 115. ~~Public~~ Access to Proceedings

A. Trials and Hearings.
All trials upon the merits shall be conducted in open court and so far as convenient in a regular courtroom; except that in an action for divorce, annulment, civil protection order or breach of promise of marriage, the court may exclude all persons from the courtroom except officers of the court, the parties, their witnesses, and counsel, provided that in any cause the court may exclude witnesses as provided in the Idaho Rules of Evidence. All trials or hearings of any court held before a judge or magistrate assigned thereto, and all judgments and orders issued by such courts shall be deemed to have been done in open court regardless of the place held. In the discretion of the court, any hearing except a trial or evidentiary hearing may be held outside the county in which the action was filed or transferred for change of venue. A minute entry shall be made by the clerk of the court under the direction of the court of all court proceedings and filed in the official file of the action.

B. Notice of Orders or Judgments.
Immediately upon the entry of an order of judgment the clerk of the district court, or magistrates division, shall serve a copy thereof, with the clerk's filing stamp thereon showing the date of filing, by mail on every party affected thereby by mailing or delivering to the attorney of record of each party, or if the party is not represented by an attorney, by mailing to the party at the address designated by the prevailing party as most likely to give notice to such party. The prevailing party, or other party designated by the court to draft an order or judgment, shall provide and deliver to the clerk sufficient copies for service upon all parties together with envelopes addressed to each party, as provided above, with sufficient postage attached, unless otherwise ordered by the court. The clerk

shall make a note in the court records of the mailing. Such mailing is sufficient notice for all purposes for which notice of the entry of an order is required by these rules; but any party preparing a proposed order or a proposed judgment shall in addition serve a copy on each party in the manner provided in Rule 5 of the service of papers. Lack of notice of entry of an order or judgment does not affect the time to appeal or to file a post-judgment motion, or relieve or authorize the court to relieve a party for failure to appeal or file a post-trial motion within the time allowed, except where there is no showing of mailing by the clerk in the court records and the party affected thereby had no actual notice.

4. That Rule 126 be, and the same is hereby, amended as follows:

Rule 126. Idaho Child Support Guidelines.

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I. Income verification. In all cases (contested, uncontested, or stipulated), the Affidavit Verifying Income and the Child Support Worksheet shall be provided to the court by the petitioner or moving party. They shall be in substantially the same forms ~~attached~~ as set forth in the Appendix ~~A and B or C~~ to these Guidelines. The Affidavits Verifying Income and the Child Support Worksheets shall be placed in the court file. The court may order the periodic exchange of documented income information by Affidavit Verifying Income or otherwise in any child support order.

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5. That Rule 127 be, and the same is hereby, adopted as follows:

Rule 127. Reclaiming Exhibits, Documents or Property.
At any time after the expiration of the time for appeal, the determination of an appeal, or the determination of a proceeding following an appeal and the expiration of the time for any subsequent appeal, whichever is later, any party or any interested person may apply to the trial court for an order permitting a reclamation by such party of exhibits offered or admitted in evidence, or any other documents or property displayed or considered in connection with the action. The trial court in its discretion may grant such an order on such conditions and under such circumstances as it deems appropriate, including but not limited to the substitution of a copy, photograph, drawing, facsimile, or other reproduction of the original exhibit, document or property, or the posting of a bond that the exhibit, document or property will be returned to the court if the court later finds it necessary.

6. That Rule 210 be, and the same is hereby, amended as follows:

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C. Persons to be Joined if Feasible.

A person who is subject to service of process shall be joined as a party in the action if (1) in the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may (i) as a practical matter impair or impede the person's ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed interest. If the person has not been so joined, the court shall order that the person be made a party. If the person should join as a plaintiff but refuses to do so, the person may be made a defendant, or, in a proper case, an involuntary plaintiff.

D. Determination by Court Whenever Joinder Not Feasible.

If a person as described in subdivision C-D hereof cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include: first, to what extent a judgment rendered in the person's absence might be prejudicial to the person or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for non-joinder.

E. Permissive Joinder of Parties - Permissive Joinder.

All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all of them will arise in the action. All persons may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all of them will arise in the action. A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for one or more of the plaintiffs according to their respective rights to relief, and against one or more defendants according to their respective liabilities.

F. Misjoinder and Nonjoinder of Parties.

Misjoinder of parties is not ground for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just. Any claim against a party may be severed and proceeded with separately.

7. That Rule 401 be, and the same is hereby, amended as follows:

Rule 401. Mandatory Disclosure in Contested Proceedings.

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E. Debts. Unless the parties have entered into a written agreement disposing of all debt issues in the case or no debts are at issue in the case, each party shall prepare ~~a list of~~ a list of all debts identifying the creditors and the amounts owed. In addition, each party shall provide to the other party the following documents:
1. copies of all monthly or periodic statements and documents showing the balances owing on all mortgages, notes, liens, and encumbrances outstanding against all real property and personal property in which the party has or had an interest for the period commencing six (6) months prior to the filing of the petition and through the date of the disclosure, or if no monthly or quarterly statements are available during this time period, the most recent statements or documents that disclose the information; and
2. copies of credit card statements and debt statements for all months for the period commencing six (6) months prior to the filing of the petition and through the date of the disclosure.

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8. That Rule 413 be, and the same is hereby, amended as follows:

Rule 413. Uniform and Non-Uniform Interrogatories; Limitations; Procedure

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F. Propounding and responding to interrogatories. The method of propounding and responding to interrogatories shall be as follows:
1. The propounding party shall serve a copy of the interrogatories upon each other party to the action, identifying which party or parties the interrogatories are directed to.
2. The responding party shall:
a. fully answer each interrogatory, unless it is objected to, in which event the reasons for the objection may be stated in place of an answer,
b. sign the response under oath, and
c. within 30 days of service of the interrogatories, serve the original answers and objections upon the propounding party and a copy upon all other parties. <u>The court may allow a shorter or longer time.</u>
The party submitting the interrogatories may move for an order under Rule 443 with respect to any objection to or other failure to respond to any interrogatory.

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9. That Rule 443 be, and the same is hereby, amended as follows:

Rule 443. Sanctions for Violation of Mandatory Disclosure and Orders- Motion for Order Compelling Discovery.

A. Motion for Sanctions- Mandatory Disclosure. A party may enforce compliance with the mandatory disclosure provision set forth in Rule 401 by filing a motion with the court seeking the imposition of sanctions against a non-compliant party. The motion must include a certification that the movant has in good faith conferred or attempted to confer with the alleged non-compliant party in an effort to secure the disclosure without court action. After reasonable notice to all parties and a hearing on the motion, the court may impose against a non-compliant party any sanctions available under Rule 443 through 447.

~~A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling discovery as follows:~~

~~**A. Appropriate court.** An application for an order to a party may be made to the court in which the action is pending, or, on matters relating to a deposition, taken in connection with litigation pending outside the state, to the district court in the judicial district where the deposition is being taken. An application for an order to a deponent who is not a party shall be made to the court in the district where the deposition is being taken.~~

B. Motion to compel additional discovery. The discovering party may move for an order compelling disclosure, an answer, or a designation, or an order compelling inspection in accordance with the request, or compelling an evaluation under Rule 442 if:
1. a deponent fails to answer a question propounded under Rule 430;
2. a corporation or other entity fails to make a designation under Rule 430.G;
3. a party fails to answer an interrogatory submitted under Rule 413;
4. a party, in response to a request for inspection submitted under Rule 416, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested; or
5. a person or a person in the custody of or under the legal control of a party fails to attend an examination under Rule 442.
6. a person fails to comply with the mandatory disclosure provisions of Rule 401.
The motion must include a certification that the movant has in good faith conferred or attempted to confer with the party not making the disclosure in an effort to secure the disclosure without court action. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before he applies for an order. If the court denies the motion in whole or in part, it may make such protective order as it would have been empowered to make on a motion made pursuant to Rule 409.

C. Evasive or incomplete answer or disclosure. For purposes of this subdivision an evasive or incomplete answer is to be treated as a failure to answer or disclose.

D. Award of expenses of motion. If the motion is granted, the court shall, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney's fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.
If the motion is denied, the court shall, after opportunity for hearing, require the moving party or the attorney advising the motion or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney's fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is granted in part and denied in part, the court may apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

~~A~~**E. Appropriate court.** An application for an order to a party may be made to the court in which the action is pending, or, on matters relating to a deposition, taken in connection with litigation pending outside the state, to the district court in the judicial district where the deposition is being taken. An application for an order to a deponent who is not a party shall be made to the court in the district where the deposition is being taken.

10. That Rule 504 be, and the same is hereby, amended as follows:

Rule 504. Motions for Temporary Orders – Mandatory Disclosure.

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C. Limitations on Verified Motion and Affidavits. No party shall file a verified motion or affidavit under this rule that exceeds twenty pages, including attachments. Affidavits from non-parties filed in support of or in opposition to a motion for temporary orders shall be limited to four per party and shall be limited to the same number of pages set forth above.

~~C~~**D. Motions for temporary orders.** Motions for temporary orders shall be heard and decided exclusively on the motion and affidavits unless, at the hearing on the motion for temporary orders, the court determines that the parties should be allowed to present evidence. In such case, the court shall schedule an evidentiary hearing within a reasonable time. Service of the motion, affidavits, and legal memoranda, if any, shall be governed by Rule 501.C.1 – 6.

11. That Rule 511 be, and the same is hereby, amended as follows:

Rule 511. Bond or Notice Discretionary in Prohibitive or Mandatory Orders.

In suits for divorce, annulment, alimony, separate maintenance, legal separation or custody of children, the court may make prohibitive or mandatory orders, with or without notice or bond as may be just, including bond for payment of costs, damages and reasonable attorney's fees, as may be just. If a party applies for an order without notice to the adverse party, the party or the party's attorney must certify to the court in writing the efforts if any, which have been made to give the notice and the reasons supporting the party's claim that notice should not be required. Any party may elect to produce testimony and evidence at any hearing, or to cross-examine the adverse party or the party's affiants, by first giving at least twenty-four (24) hours notice to the court and opposing counsel before the hearing, which requirement shall be stated in the body of the notice. If such notice is timely given it shall not be necessary to subpoena the adverse party or the party's affiants and the adverse party shall appear with the party's designated affiants without further notice unless otherwise ordered by the court. If the adverse party and the adverse party's affiants designated in the notice are not excused by the court and do not appear as requested, the court may impose such sanctions as it deems appropriate including attorney's fees for the requesting party. The hearing, notice and expiration periods set forth in Rule 508 apply to any order issued under this rule.

12. That Rule 811 be, and the same is hereby, amended as follows:

Rule 811. Stay of Proceedings to Enforce a Judgment – Stay Upon Entry of Judgment

Execution or other proceedings to enforce a judgment may issue immediately upon the entry of judgment, unless the court in its discretion and on such conditions for the security of the adverse party as are proper, otherwise directs. Unless otherwise ordered by the court an interlocutory or final judgment in an action for an injunction or writ of mandate, or in a receivership action, shall not be stayed during the period after its entry and until the appeal is taken or during the pendency of an appeal. ~~The provisions of subdivision (c) of this rule~~ Rule 813 governs the suspending, modifying, restoring, or granting of an injunction or writ of mandate during the pendency of an appeal.

13. That Rule 811 be, and the same is hereby, amended as follows:

Rule 812. Stay on Motion for New Trial or for Judgment

In its discretion and on such conditions for the security of the adverse party as are proper, the court may stay the execution of or any proceedings to enforce a judgment pending the disposition of a motion for a new trial or to alter or amend a judgment made pursuant to Rule ~~59~~ 807, or of a motion for relief from a judgment or order made pursuant to Rules

~~60~~ 808 or 809 , ~~or of a motion for judgment in accordance with a motion for a directed verdict made pursuant to Rule 50,~~ or of a motion for amendment to the findings or for additional findings made pursuant to Rule ~~52(b)~~ 802.

IT IS FURTHER ORDERED, that this order and these amendments shall be effective July 1, 2015.

IT IS FURTHER ORDERED, that the above designation of the striking of words from the Rules by lining through them, and the designation of the addition of new portions of the Rules by underlining such new portion is for the purposes of information only as amended, and NO OTHER AMENDMENTS ARE INTENDED. The lining through and underlining shall not be considered a part of the permanent Idaho Rules of Family Law Procedure.

IT IS FURTHER ORDERED, that the Clerk of the Court shall cause notice of this Order to be published in one issue of *The Advocate.*

DATED this 23 day of April, 2015.

By Order of the Supreme Court

R Burdick

Roger S. Burdick, Chief Justice

ATTEST: Stephen Kenyon
Clerk

I, Stephen W. Kenyon, Clerk of the Supreme Court of the State of Idaho, do hereby certify that the above is a true and correct copy of the Order entered in the above entitled cause and now on record in my office.
WITNESS my hand and the Seal of this Court 4-27-15

STEPHEN W. KENYON
Clerk

By: Chief Deputy